

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
INDUSTRIAL TELECOMMUNICATIONS)
ASSOCIATION, INC.)
)
Petition for Modification of the License of Hertz)
Corp. for Industrial/Business Private Land Mobile)
Radio Station WPIR684, Memphis, Tennessee)
)
and)
)
HERTZ CORP.)
)
Licensee of Conventional Industrial/Business Pool)
Radio Service Station WPIR684, Memphis,)
Tennessee)

MEMORANDUM OPINION AND ORDER

Adopted: October 23, 2002

Released: October 24, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Industrial Telecommunications Association, Inc. (ITA) requests that the Commission modify the above-captioned authorization granted to Hertz Corp. (Hertz).¹ For the reasons set forth below, we grant the ITA's request to the extent that we initiate a proceeding to modify Hertz's license for Conventional Industrial/Business Pool Station WPIR684, Memphis, Tennessee, to delete frequency pair 463/468.2650 MHz.

II. BACKGROUND

2. On October 19, 1995, the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau granted Hertz's application to operate Station WPIR684. The station was authorized to operate on six frequency pairs, including 463/468.2650 MHz.

3. By letter dated October 19, 2001, ITA requests that the Commission determine the correct frequency for this system and issue a new authorization to reflect the appropriate frequency, or set aside Hertz's authorization if the correct frequency cannot be determined.² Specifically, ITA argues that the

¹ Letter dated October 19, 2001 and received October 30, 2001 from Richard F. Feser, Director, Spectrum Operations & Analysis, ITA, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (ITA Letter).

² See *id.*

subject authorization was granted in error because there is no allocation for the frequency pair 463/468.2650 MHz in either the Industrial/Business or Public Safety Pools according to current FCC rules.³ ITA contends that the authorization of this frequency pair to Station WPIR684 is encumbering the recommendation of 460 MHz frequencies within the range of this channel.⁴ Therefore, ITA urges the Commission to replace the frequency pair with a valid frequency pair or set aside the authorization.⁵

III. DISCUSSION

4. We believe that ITA's request is most properly characterized as an informal request for Commission action under Section 1.41 of the Commission's Rules.⁶ Hertz's operation on frequency pair 463/468.2650 MHz has a potential to interfere with stations in its vicinity operating on properly assigned, adjacent channels. We conclude Hertz's application should not have been granted to the extent that such action authorized operation on an invalid frequency pair.

5. We find that ITA's suggestion to set aside Hertz's authorization is unnecessary in the instant case because we have an alternative to ITA's proposed action. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.⁷ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.⁸ In this connection, we note that proposed modification would serve the public interest by preserving the existing coverage areas of affected parties and preventing harmful interference, while not unduly disrupting Hertz's operations. We believe that a modification of the Hertz license to simply delete frequency pair 463/468.2650 MHz without authorizing a replacement frequency pair is appropriate.

6. As discussed above, the coordination of Hertz's application was defective because the subject frequency pair is not allotted for Industrial/Business or Public Safety Pool operations. Thus, we believe that a modification of the subject Hertz license for Station WPIR684 to delete frequency pair 463/468.2650 MHz is appropriate to preserve the existing coverage areas of affected parties and prevent harmful interference. In accordance with Section 1.87(a) of the Commission's Rules,⁹ we will not issue a modification order until Hertz has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, Hertz must, within thirty days of the release date of this *Memorandum Opinion and Order*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, DC 20554.¹⁰ If no protest is filed, Hertz will have waived its right to protest the modification and will be deemed to have consented to the modification.

³ *Id.* See 47 C.F.R. §§ 90.20, 90.35.

⁴ See ITA Letter.

⁵ *Id.*

⁶ 47 C.F.R. § 1.41.

⁷ 47 U.S.C. § 316(a)(1).

⁸ *Id.*

⁹ 47 C.F.R. § 1.87(a).

¹⁰ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's (continued....)

IV. CONCLUSION

7. For the reasons stated above, we conclude that the grant of Hertz's application was defective to the extent that it authorized operations on frequency pair 463/468.2650 MHz. As a result, we believe that the license grant to Hertz for Station WPIR684 was defective with respect to such frequency. Accordingly, we propose the modification of Hertz's license for Station WPIR684 by deleting frequency pair 463/468.2650 MHz.

V. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the petition to modify the authorization of Station WPIR684, submitted by Industrial Telecommunications Association, Inc. on August 24, 2000, IS GRANTED to the extent indicated above and IS OTHERWISE DENIED.

9. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Private Land Mobile Radio Service Station WPIR684, Memphis, Tennessee, held by Hertz Corp., BE MODIFIED by deleting frequency pair 463/468.2650 MHz.

10. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to Hertz Corp., 5601 NW Expressway, Oklahoma City, Oklahoma 73132.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

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Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).